

AMENDED IN ASSEMBLY MAY 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 440

Introduced by Assembly Member Gatto
(Principal coauthor: Assembly Member Mullin)

February 15, 2013

An act to add Chapter 6.10 (commencing with Section 25403) to Division 20 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 440, as amended, Gatto. Hazardous substances: releases: local agency cleanup or remedy.

Existing law dissolved redevelopment agencies and community development agencies, as of February 1, 2012, and provides for the designation of successor agencies, as defined. Existing law requires successor agencies to wind down the affairs of the dissolved redevelopment agencies and to, among other things, perform obligations required pursuant to any enforceable obligation, including, but not limited to, any obligations under the Polanco Redevelopment Act to remedy or remove the release of hazardous substances within a project area consistent with state and federal laws, as specified.

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, imposes liability for hazardous substance removal or remedial actions and requires the Department of Toxic Substances Control to adopt, by regulation, criteria for the selection and for the priority ranking of hazardous substance release sites for removal or remedial action under the act.

This bill would authorize a local agency to take any action similar to that under the Polanco Redevelopment Act that the local agency determines is necessary, consistent with other state and federal laws, to remedy or remove a release of hazardous substances within the boundaries of the local agency, pursuant to the procedures specified in the bill.

The bill would require the Department of Toxic Substances Control and the California regional water quality control board to adopt and post cleanup guidelines for the taking of a ~~remedial~~ and removal or remedial action. A local agency would be required to submit for approval a cleanup plan to the regional board or a *removal or remedial* action plan to the department before taking action. *The bill would require a local agency to take specified actions with regard to providing an opportunity for the public and other public agencies to participate in decisions regarding the proposed removal or remedial action plan or cleanup plan.* The bill would allow the local agency to take those ~~remedial~~ or removal or remedial actions only under specified conditions with regard to the responsible party for the release, unless the local agency is taking action to investigate or conduct feasibility studies concerning a release or determines that conditions require immediate action.

The bill would allow the local agency to designate another agency, in lieu of the department or the regional board, to review and approve a cleanup plan or *removal or remedial* action plan and to oversee the remediation or removal of hazardous substances from a hazardous substance release site, under certain conditions. The bill would immunize a local agency that remedies or removes a hazardous substance release, pursuant to those provisions, from liability under specified state laws, if the action is in accordance with a cleanup plan or *removal or remedial* action plan prepared by a qualified independent contractor, as defined, and approved by the department, a regional board, or the designated agency, and the ~~remedial~~ or removal or remedial action is undertaken and properly completed. The bill would authorize the recovery by a local agency of cleanup and remedial costs from the ~~liable~~ responsible party.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6.10 (commencing with Section 25403)
2 is added to Division 20 of the Health and Safety Code, to read:

3
4 CHAPTER 6.10. HAZARDOUS SUBSTANCE RELEASE CLEANUP
5

6 25403. For purposes of this article, the following terms shall
7 have the following meanings:

8 (a) “CUPA” means the Certified Unified Program Agency
9 certified to implement the unified program pursuant to Chapter
10 6.11 (commencing with Section 25404).

11 (b) “Department” means the Department of Toxic Substances
12 Control.

13 (c) “Designated agency” means an agency designated by the
14 local agency pursuant to paragraph (1) or (2) of subdivision (d) of
15 Section 25403.1.

16 (d) “Director” means the Director of Toxic Substances Control.

17 (e) “Hazardous substance” means a hazardous substance as
18 defined in subdivision (h) of Section 25281, and any reference to
19 hazardous substance in the definitions referenced in this section
20 shall be deemed to refer to hazardous substance, as defined in this
21 subdivision.

22 (f) “Local agency” means a county, a city, or a housing
23 authority, as provided in Section 34240.

24 (g) “Person” means an individual, trust, firm, joint stock
25 company, business concern, partnership, limited liability company,
26 association, and corporation, including, but not limited to, a
27 government corporation. “Person” also includes any local agency,
28 county, district, commission, the state or any department, agency,
29 or political subdivision thereof, any interstate body, and the federal
30 government or any department or agency thereof to the extent
31 permitted by law.

32 (h) “Phase I environmental assessment” has the same meaning
33 as defined in Section 25200.14, except with respect to a hazardous
34 substance.

35 (i) “Qualified independent contractor” means an independent
36 contractor who is any of the following:

37 (1) An engineering geologist who is certified pursuant to Section
38 7842 of the Business and Professions Code.

1 (2) A geologist who is registered pursuant to Section 7850 of
2 the Business and Professions Code.

3 (3) A civil engineer who is registered pursuant to Section 6762
4 of the Business and Professions Code.

5 (j) “Regional board” means a California regional water quality
6 control board.

7 (k) “Release” means any spilling, leaking, pumping, pouring,
8 emitting, emptying, discharging, injecting, escaping, leaching,
9 dumping, or disposing into the environment.

10 (l) (1) “Remedy” or “remove” means an action to assess,
11 evaluate, investigate, monitor, remove, correct, clean up, or abate
12 a release of a hazardous substance or to develop plans for those
13 actions.

14 (2) “Remedy” includes all of the following:

15 (A) Those actions that are consistent with a permanent remedy,
16 that are taken instead of, or in addition to, removal actions in the
17 event of a release or threatened release of a hazardous substance
18 into the environment. “Remedy” also includes those actions
19 specified in Section 9601 of Title 42 of the United States Code,
20 except that any reference in Section 9601 of Title 42 of the United
21 States Code to the President, relating to determinations regarding
22 the relocation of residents, businesses, and community facilities
23 shall, for the purposes of this chapter, be deemed to be a reference
24 to the Governor, and any other reference in that section to the
25 President shall, for the purposes of this chapter, be deemed a
26 reference to the Governor, or the director, if designated by the
27 Governor.

28 (B) Those actions that are necessary to monitor, assess, and
29 evaluate a release or a threatened release of a hazardous substance.

30 (C) Site operation and maintenance.

31 (3) “Remove” includes the cleanup or removal of released
32 hazardous substances from the environment or the taking of other
33 actions as may be necessary to prevent, minimize, or mitigate
34 damage that may otherwise result from a release or threatened
35 release. “Remove” includes those actions specified in Section 9601
36 of Title 42 of the United States Code.

37 (m) “Responsible party” means a person described in subdivision
38 (a) of Section 25323.5 of this code or subdivision (a) of Section
39 13304 of the Water Code.

(n) “State board” means the State Water Resources Control Board.

25403.1. (a) (1) A local agency may take any action that the local agency determines is necessary and that is consistent with other state and federal laws to remedy or remove a release of hazardous substances on, under, or from property within a local agency’s boundaries, whether the local agency owns that property or not, in accordance with the requirements of this chapter. When taking action pursuant to this chapter, if the local agency does not own property that is the subject of the removal or remedial action, the local agency has the right of entry upon that property, if, upon providing notice to the owner of that property *in accordance with subparagraph (A) of paragraph (1) of subdivision (b)*, the owner of the property does not respond to the notice *or the local agency deems the response inadequate*.

(2) (A) The department and regional board shall adopt and post on that agency’s Internet Web site general cleanup guidelines with regard to taking action to remedy or remove a release pursuant to this chapter.

(B) *Paragraph (A) does not prohibit the department or the regional board from approving site-specific cleanup guidelines, with regard to taking an action to remedy or remove a release pursuant to this chapter, as appropriate.*

(3) The adoption and posting of general cleanup guidelines pursuant to this section shall not be deemed the adoption of a regulation for purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be exempt from those provisions.

(4) A local agency shall, before taking action to remedy or remove the release, do ~~both~~ *all* of the following:

(A) Have a *removal or* remedial action plan or cleanup plan prepared, pursuant to those guidelines, by an independent qualified contractor.

(B) Submit a cleanup plan to the regional board or a *removal or* remedial action plan to the department for approval.

(C) *Comply with the public participation requirements specified in Section 25403.7.*

(5) The regional board or the department shall respond to the local agency’s request for approval of a cleanup plan or *removal or* remedial action plan within 60 days of the receipt of the plan.

1 (6) Within 60 days after approval of the cleanup plan or *removal*
2 or remedial action plan, pursuant to applicable statutes and
3 regulations, the director, or the regional board, as appropriate, shall
4 acknowledge, in writing, that upon proper completion of the
5 ~~remedial or removal~~ or *remedial* action in accordance with the
6 plan, the immunity provided by Section 25403.2 shall apply ~~to the~~
7 ~~local agency~~.

8 (7) The local agency shall notify the department and local health
9 and building departments and the regional ~~board~~, *board* of any
10 cleanup activity pursuant to this section at least 30 days before the
11 commencement of the activity.

12 (8) If an action taken by a local agency or a responsible party
13 to remedy or remove a release of a hazardous substance does not
14 meet, or is not consistent with, a cleanup plan approved by the
15 regional board or a *removal or remedial* action plan approved by
16 the department, the department or the regional board that approved
17 the cleanup plan or *removal or remedial* action plan may require
18 the *responsible party or* local agency to take, or cause the taking
19 of, additional action to remedy or remove the release, as provided
20 by applicable law.

21 (9) If an administering agency for the site has been designated
22 pursuant to Section 25262, the department or the regional board
23 may impose any requirements for additional action pursuant to
24 paragraph (8) only as provided in Sections 26263 and 25265.

25 (10) If methane or landfill gas is present, the local agency shall
26 obtain written approval from the Department of Resources
27 Recycling and Recovery prior to taking action authorized under
28 this subdivision.

29 (b) Except as provided in subdivision (c), a local agency may
30 take the actions specified in subdivision (a) only under one of the
31 following conditions:

32 (1) There is no responsible party for the release identified by
33 the local agency.

34 (2) Both of the following apply:

35 (A) A party determined by the local agency to be a responsible
36 party for the release has been notified by the local agency, or has
37 received adequate notice from the department, a regional board,
38 the California Environmental Protection Agency, or other
39 governmental agency with relevant authority, and has been given

1 60 days to respond and to propose a *removal or* remedial action
2 plan *or cleanup plan* and schedule.

3 (B) The responsible party specified in subparagraph (A) has not
4 agreed within an additional 60 days to implement a plan and
5 schedule to remedy or remove the release that meets both of the
6 following requirements:

7 (i) The plan and schedule are acceptable to the local agency.

8 (ii) The local agency makes a finding that the plan and schedule
9 are consistent with the intended use of the property.

10 (3) (A) The party determined by the local agency to be the
11 responsible party for the hazardous substance release entered into
12 an agreement with the local agency to prepare a *removal or*
13 remedial action plan or cleanup plan for approval by the
14 department, the regional board, or the appropriate local agency,
15 and to implement the *removal or* remedial action plan or cleanup
16 plan in accordance with an agreed schedule, but failed to do any
17 of the following:

18 (i) Prepare the *removal or* remedial action plan or cleanup plan.

19 (ii) Implement the *removal or* remedial action plan or cleanup
20 plan in accordance with the agreed schedule.

21 (iii) Otherwise failed to carry out the *removal or* remedial action
22 in an appropriate and timely manner.

23 (B) An action taken by the local agency pursuant to this
24 paragraph shall be consistent with any agreement between the local
25 agency and the responsible party and with the requirements of the
26 state agency or the local agency that approved or will approve the
27 *removal or* remedial action plan or cleanup plan and is overseeing
28 or will oversee the preparation and implementation of the *removal*
29 *or* remedial action plan.

30 (c) Subdivision (b) does not apply to either of the following:

31 (1) A local agency taking actions to investigate or conduct
32 feasibility studies concerning a release.

33 (2) A local agency taking the actions specified in subdivision
34 (a) if the local agency determines that conditions require immediate
35 action.

36 (d) (1) A local agency may designate another agency, in lieu
37 of the department or the regional board, to review and approve a
38 cleanup plan or a *removal or* remedial action plan and to oversee
39 the remediation or removal of hazardous substances from a specific
40 hazardous substance release site if the agency is designated as the

1 administering agency under Section 25262. In that event, the
2 designated agency shall conduct the oversight of the *removal or*
3 remedial action in accordance with Chapter 6.65 (commencing
4 with Section 25260), and all provisions of that chapter shall apply
5 to the *removal or* remedial action.

6 (2) A local agency may designate another agency to review and
7 approve a cleanup plan or a *removal or* remedial action plan for a
8 site and oversee the remediation and removal action at the site if
9 all of the following conditions exist:

10 (A) The designated agency is certified as a CUPA.

11 (B) The site is an underground storage tank site subject to
12 Chapter 6.7 (commencing with Section 25280).

13 (C) The designated agency is certified pursuant to Section
14 25297.01 and the state board has entered into an agreement with
15 that agency pursuant to Section 25297.1.

16 (D) The designated agency determines that the site is within the
17 guidelines and protocols established in, and pursuant to, the
18 agreement specified in subparagraph (C).

19 (E) The designated agency consents to the designation.

20 (3) Within 60 days after approving a cleanup plan or a *removal*
21 *or* remedial action plan pursuant to paragraph (1) or (2), the
22 designated agency shall issue a notice that, upon proper completion
23 of the *removal or* remedial ~~or removal~~ action plan, the immunity
24 specified in Section 25403.2 shall apply ~~to the local agency~~. If the
25 designated agency was formed by the local agency, the cleanup
26 plan or *removal or* remedial action plan shall also be subject to
27 the approval of the department or regional board.

28 (4) (A) An agency may not consent to the designation pursuant
29 to paragraph (1) or (2) unless the designated agency determines
30 that it has adequate staff resources and the requisite technical
31 expertise and capabilities available to adequately supervise the
32 *removal or* remedial action.

33 (B) If an agency has been designated pursuant to paragraph (2),
34 the department or a regional board may require the designated
35 agency *to* withdraw from the designation or stop taking ~~that~~ action
36 *pursuant to that designation*, after providing the designated agency
37 with adequate notice, if both of the following conditions are met:

38 (i) The department or a regional board determines that the
39 agency's designation was not consistent with paragraph (2), or

1 makes one of the findings specified in subdivision (d) of Section
2 101480.

3 (ii) The department or a regional board determines that it has
4 adequate staff resources and capabilities available to adequately
5 supervise the *removal or* remedial action, and assumes that
6 responsibility.

7 (C) This paragraph does not prevent a regional board from taking
8 an action pursuant to Division 7 (commencing with Section 13000)
9 of the Water Code.

10 (5) If an agency has been designated pursuant to paragraph (1)
11 or (2), the designated agency may, after providing the local agency
12 with adequate notice, withdraw from its designation or stop taking
13 action *pursuant to that designation* after making one of the findings
14 specified in subdivision (d) of Section 101480.

15 (e) (1) To facilitate remedial planning, the local agency may
16 require the owner or operator of a site within the local agency's
17 jurisdictional boundaries to provide the local agency with all
18 existing environmental information pertaining to the site, including
19 the results of any phase I or subsequent environmental assessment,
20 any assessment conducted pursuant to an order from, or agreement
21 with, any federal, state, or local agency, and any other
22 environmental assessment information, except that which is
23 determined to be privileged.

24 (2) A person requested to furnish the information pursuant to
25 paragraph (1) shall be required only to furnish that information
26 that may be within that person's possession or control, including
27 actual knowledge of information within the possession or control
28 of any other party. If environmental assessment information is not
29 available, the local agency may require the owner of the property
30 to conduct, and to pay the expenses of conducting, an assessment
31 in accordance with standard real estate practices for conducting
32 phase I or phase II environmental assessments. *If the local agency
33 conducts the phase I or phase II environmental assessment because
34 the owner or operator failed to provide this information, the local
35 agency shall have a right of entry, upon reasonable notice, to enter
36 the property and conduct the phase I or phase II environmental
37 assessment. The local agency may recover the costs of the phase
38 I or phase II environmental assessment in accordance with Section
39 25403.5.*

1 25403.2. (a) (1) Notwithstanding any other law, except as
2 otherwise provided in this chapter, a local agency that undertakes
3 and completes an action, or causes another person to undertake
4 and complete an action pursuant to Section 25403.1 for which a
5 finding of completion is made pursuant to subdivision (b), to
6 remedy or remove a hazardous substance release on, under, or
7 from property *within* the local agency's boundaries, in accordance
8 with a cleanup plan or *removal or remedial* action plan prepared
9 by a qualified independent contractor and approved by the
10 department, a regional board, or the designated agency, in
11 accordance with Section 25403.1, is not liable, with respect to that
12 release only, pursuant to any of the following:

13 (A) Division 7 (commencing with Section 13000) of the Water
14 Code.

15 (B) Chapter 6.5 (commencing with Section 25100), Chapter 6.7
16 (commencing with Section 25280), Chapter 6.75 (commencing
17 with Section 25299.10), or Chapter 6.8 (commencing with Section
18 25300), of Division 20.

19 (C) Any other state or local law imposing liability for ~~remedial~~
20 ~~or removal or remedial~~ actions to releases of hazardous substances.

21 (2) If the *removal or remedial* action was also performed
22 pursuant to Chapter 6.65 (commencing with Section 25260) of
23 Division 20, and a certificate of completion is issued pursuant to
24 subdivision (b) of Section 25264, the immunity from local agency
25 action provided by the certificate of completion, as specified in
26 subdivision (c) of Section 25264, shall apply to the local agency,
27 in addition to the immunity conferred by this section.

28 (3) In the case of a *removal or remedial* action performed
29 pursuant to Chapter 6.65 (commencing with Section 25260) of
30 Division 20, and for which the administering agency is a local
31 agency, the limitations on the certificate of completion set forth
32 in paragraphs (1) to (6), inclusive, of subdivision (c) of Section
33 25264 are limits on any immunity provided for by this section and
34 subdivision (c) of Section 25264.

35 (b) Notwithstanding any provision of law or policy providing
36 for certification by a person conducting a ~~remedial or removal or~~
37 *remedial* action that the action has been properly completed, a
38 determination that a ~~remedial or removal or remedial~~ action has
39 been properly completed pursuant to this section shall be made
40 only upon the affirmative approval of the director, the regional

1 board, or the designated agency, as appropriate. The department
2 or regional board, as appropriate, shall, within 60 days of the date
3 it finds that a ~~remedial~~ or removal or *remedial* action has been
4 completed, notify the local agency in writing that the immunity
5 provided by this section is in effect. If another agency is designated
6 to oversee the ~~remedial~~ or removal or *remedial* action pursuant
7 to paragraph (1) or (2) of subdivision (d) of Section 25403.1, the
8 designated agency shall issue a notice within 60 days of the date
9 it finds that a ~~remedial~~ or removal or *remedial* action has been
10 completed.

11 (c) Upon proper completion of a ~~remedial~~ or removal or
12 *remedial* action, as specified in subdivision (b), the immunity from
13 action provided by the certificate of completion provided pursuant
14 to subdivision (c) of Section 25264 and the immunity provided by
15 this section extends to all of the following, but only for the release
16 or releases specifically identified in the approved cleanup or
17 *removal* or remedial action plan and not for any subsequent release
18 or any release not specifically identified in the approved cleanup
19 plan or *removal* or remedial action plan:

20 (1) An employee or agent of the local agency, including an
21 instrumentality of the local agency authorized to exercise some,
22 or all, of the powers of a local agency within, or for the benefit of,
23 a local agency and an employee or agent of the instrumentality.

24 (2) A person that enters into an agreement with a local agency
25 for the development of property, if the agreement requires the
26 person to acquire property affected by a hazardous substance
27 release or to remove or remedy a hazardous substance release with
28 respect to that property.

29 (3) A person that acquires the property after a person has entered
30 into an agreement with a local agency for development of the
31 property, as described in paragraph (2).

32 (4) A person that provides financing to a person specified in
33 paragraph (2) or (3).

34 (d) Notwithstanding any other law, the immunity provided by
35 this section does not extend to any of the following:

36 (1) A person that was a responsible party for the release before
37 entering into an agreement, acquiring property, or providing
38 financing, as specified in subdivision (c).

39 (2) A person specified in subdivision (a) or (c) for any
40 subsequent release of a hazardous substance or any release of a

1 hazardous substance not specifically identified in the approved
2 cleanup plan or *removal or* remedial action plan.

3 (3) A contractor who prepares the cleanup plan or *removal or*
4 remedial action plan, or conducts the removal or remedial action.

5 (4) A person that obtains an approval of a cleanup plan or
6 *removal or* remedial action plan pursuant to Section 25403.1, or
7 a finding, as specified in subdivision (b), by fraud, negligent or
8 intentional nondisclosure, or misrepresentation, and a person that
9 knows before the approval or determination is obtained or before
10 the person enters into an agreement, acquires the property or
11 provides financing, as specified in subdivision (c), that the approval
12 or determination was obtained by these means.

13 (e) The immunity provided by this section is in addition to any
14 other immunity provided by law to a local agency.

15 (f) This section does not impair any cause of action by a local
16 agency or any other party against the person responsible for the
17 hazardous substance release that is the subject of the removal or
18 remedial action taken by the local agency or other person immune
19 from liability pursuant to this section.

20 (g) This section does not apply to, or limit, alter, or restrict, an
21 action for personal injury or wrongful death.

22 (h) This section does not limit liability of a person described in
23 paragraph (3) or (4) of subdivision (d) for damages under the
24 federal Comprehensive Environmental Response, Compensation,
25 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et
26 seq.).

27 (i) This section does not establish, limit, or affect the liability
28 of a local agency for a release of a hazardous substance that is not
29 investigated or remediated pursuant to this section or Chapter 6.65
30 (commencing with Section 25260).

31 25403.3. The immunity provided for by Section 25403.2 is
32 only conferred if both of the following apply:

33 (a) The action is in accordance with a cleanup plan or *removal*
34 *or* remedial action plan prepared by a qualified independent
35 contractor and approved by the department, a regional board, or
36 the designated agency, as appropriate, pursuant to Section 25403.1.

37 (b) ~~The remedial~~ *or removal or remedial* action is found to have
38 been undertaken and properly completed, as specified in
39 subdivision (b) of Section 25403.2.

1 25403.4. The local agency shall reimburse the department or
2 the regional board for costs incurred in reviewing or approving
3 cleanup or *removal or* remedial action plans pursuant to this
4 chapter.

5 25403.5. (a) Except as otherwise provided in this chapter, if
6 a local agency undertakes action to *investigate or characterize*
7 *property, or to* remedy or remove, or to require others to remedy
8 or remove, including compelling a responsible party through a
9 civil *injunctive* action, to remedy or remove a release of hazardous
10 substance, the responsible party shall be liable to the local agency
11 for the costs incurred in the action. A local agency may not recover
12 the costs of goods and services that were not procured in
13 accordance with procurement procedures, where applicable. The
14 amount of the costs shall include the interest on the costs accrued
15 from the date of expenditure and reasonable attorney's fees and
16 shall be recoverable in a civil action. Interest shall be calculated
17 based on the average annual rate of return on a local agency's
18 investment of surplus funds for the fiscal year in which costs were
19 incurred.

20 (b) The only defenses available to a responsible party shall be
21 the defenses specified in subdivision (b) of Section 25323.5.

22 (c) A local agency may recover any costs incurred to develop
23 and to implement a cleanup plan or *removal or* remedial action
24 plan approved pursuant to this chapter, to the same extent the
25 department is authorized to recover those costs. The scope and
26 standard of liability for cost recovery pursuant to this section shall
27 be the scope and standard of liability under the federal
28 Comprehensive Environmental Response, Compensation, and
29 Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.)
30 as that act would apply to the department. However, any reference
31 to hazardous substance in that act shall be deemed to refer to
32 hazardous substance as defined in Section 25403.

33 (d) An action for recovery of the costs of a remedy or removal
34 undertaken by a local agency under this section shall be
35 commenced within three years after completion of the remedy or
36 removal.

37 (e) The action to recover costs provided by this section is in
38 addition to, and is not to be construed as restricting, any other
39 cause of action available to a local agency.

1 25403.6. (a) Except as provided in Section 25403.4,
2 notwithstanding any other state law or policy, a local agency that
3 undertakes and completes a *removal or* remedial action, or
4 otherwise causes a *removal or* remedial action to be undertaken
5 and completed pursuant to this chapter shall not be liable based
6 on its ownership of property after a release occurred, for any costs
7 that any responsible party for that release incurs to investigate or
8 remediate the release or to compensate others for the effects of
9 that release.

10 (b) Except as provided in Section 25403. 2, this article does not
11 limit the powers of the state board or a regional board to enforce
12 Division 7 (commencing with Section 13000) of the Water Code.

13 25403.7. *A local agency shall comply with all the following*
14 *requirements with regard to providing public participation when*
15 *taking action pursuant to this chapter:*

16 (a) *The local agency shall provide an opportunity, when*
17 *preparing the removal or remedial action plan or cleanup plan,*
18 *for the public and for other public agencies to participate in*
19 *decisions regarding the removal or remedial action, taking into*
20 *consideration the nature of the community interest.*

21 (b) *Thirty days before submitting the removal or remedial action*
22 *plan or cleanup plan for approval, the local agency shall take all*
23 *of the following actions:*

24 (1) *Notify all other appropriate public agencies, including, but*
25 *not limited to, the department or the regional board, if not required*
26 *to approve the plan, regarding the proposed removal or remedial*
27 *action plan or cleanup plan.*

28 (2) *Place a notice in a newspaper of general circulation in the*
29 *area of the property, including, but not limited to, a*
30 *community-based newspaper, as appropriate.*

31 (3) *Post notice of the proposed removal or remedial action plan*
32 *or cleanup plan on the property.*

33 (c) *All of the following methods for public participation shall*
34 *be used to notify the public of the proposed removal or remedial*
35 *action plan or cleanup plan:*

36 (1) *Thirty days' prior public notice in a factsheet format of the*
37 *proposed removal or remedial action plan or cleanup plan, in*
38 *English and in any other language commonly spoken in the area*
39 *of the property.*

1 (2) Access, at both the local agency and at local repositories,
2 to the proposed removal or remedial action plan or cleanup plan,
3 property assessment, addenda, and any other supporting
4 documentation, including materials listed as references in the
5 removal or remedial action plan or cleanup plan and property
6 assessment.

7 (3) Procedures for providing a reasonable opportunity to
8 comment on the plan and related documents specified in paragraph
9 (2).

10 (d) If a public meeting is requested, the local agency shall hold
11 a public meeting in the area of the property to receive comments.

12 (e) The local agency shall consider any comments received
13 before submitting the proposed removal or remedial action plan
14 or cleanup plan for approval.

15 (f) The local agency may also provide for, but is not limited to,
16 the use of other methods for public participation, including public
17 notices, direct notification of interested parties, distribution of
18 electronic copies of the removal or remedial action plan or cleanup
19 plan, property assessment addenda, and other supporting
20 documentation, including materials listed as references in the
21 removal or remedial action plan or cleanup plan and property
22 assessment, electronic comment forms, and forming advisory
23 groups, as appropriate, to disseminate information and assist the
24 local agency in gathering public input, holding additional public
25 meetings or public hearings, and providing an opportunity to
26 comment on the proposed removal or remedial action plan or
27 cleanup plan prior to approval.

28 (g) The local agency, as part of its communications with affected
29 communities, shall provide information regarding the process by
30 which decisions about the property are made and the recourse
31 that is available for those who may disagree with an agency
32 decision.

33 (h) The local agency shall consider the issue of environmental
34 justice, as defined in subdivision (e) of Section 65040.12 of the
35 Government Code, for communities most impacted, including
36 low-income and racial minority populations, before submitting
37 the removal or remedial action plan or cleanup plan for approval.

38 (i) To the extent possible, the local agency shall coordinate its
39 public participation activities with those undertaken by other

1 *jurisdictions and agencies associated with the property, to avoid*
2 *duplication.*

3 *(j) It is the intent of the Legislature that the public participation*
4 *process established pursuant to this section ensures full and robust*
5 *participation of a community affected by this chapter.*

6 ~~24303.7.~~

7 25403.8. The Legislature finds and declares that this chapter
8 is the policy successor to the Polanco Redevelopment Act (Article
9 12.5 (commencing with Section 33459) of Part 1 of Chapter 4 of
10 Division 24) and shall be interpreted and implemented consistent
11 with that act. *It is further the intent of the Legislature that any*
12 *judicial construction or interpretation of the Polanco*
13 *Redevelopment Act also apply to this chapter.*